Appendix C
House of Commons Report

We have no present power to compel British operators to conform to the £21,000 limit and we are not proposing to seek such power at present. We intend to wait until the international negotiations are complete. A number of fairly detailed questions have been asked and I will make a point of writing to the hon. Members concerned.

In general, the House has given a welcome to the Order and I in turn give the assurance that this is not just a once-and-for-all settlement of the matter. It must be kept continually under review in view of the law cases and possible changes in the value of money and so on. We give an assurance that that will be done and in the light of that assurance I hope that the House will now agree to accept the Order.

Question put and agreed to.

Resolved,

That the Carriage by Air Acts (Application of Provisions) Order 1967, a draft of which was laid before this House on 7th December, be approved.

MOTION FILED
MAR 30 1967
No. 70
FILED
NOV 6 1967
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966.

ALITALIA-LINEE AEREE ITALIANE, S.p.A.,
Petitioner,

v.

JOHN LISI, ETC., *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

---

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE

and

BRIEF FOR THE INTERNATIONAL AIR TRANSPORT ASSOCIATION AS AMICUS CURIAE.

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CARL S. ROWE,
PAUL G. PENNOYER, JR.,
Of Counsel.

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U. S. Constitution, Art. VI, §2 7

Miscellaneous:

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 1169.

ALITALIA-LINEE AEREE ITALIANE, S.p.A.,
Petitioner,

v.

JOHN LISI, ETC., *et al.*,
Respondents.

MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE*.

The International Air Transport Association moves this honorable Court for leave to file the attached brief as *amicus curiae* in the above entitled cases.

Consent to this filing has been given by the attorneys for Alitalia-Linee Aeree Italiane, S.p.A., petitioner. The consent of the attorney for the respondents was requested but refused.

The nature of the movant's interest, and its reasons for believing that these cases present issues of such international and nationwide interest that the Court should grant a writ of certiorari are contained in the brief.

Respectfully submitted,

INTERNATIONAL AIR TRANSPORT ASSOCIATION
by its attorney,
HAROLD L. WARNER, JR.
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New York, N. Y. 10004

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 1169.

ALITALIA-LINEE AEREE ITALIANE, S.p.A.,
Petitioner,

v.

JOHN LISI, ETC., *et al.*,
Respondents.

BRIEF FOR THE INTERNATIONAL AIR TRANSPORT ASSOCIATION AS *AMICUS CURIAE.*

Introduction.

The International Air Transport Association ("IATA") respectfully submits this brief *amicus curiae* in support of the petition of Alitalia-Linee Aeree Italiane, S.p.A. ("Alitalia") that a writ of certiorari issue to review the judgments of the United States Court of Appeals for the Second Circuit entered in the above entitled cases on December 16, 1966, 370 F. 2d 508.

The Nature of IATA's Interest.

IATA is a body politic incorporated by special Act of the Parliament of Canada, 9-10 George VI, in 1945 for the following objectives:

(1) to promote safe, regular and economic air transport for the benefit of the peoples of the world, to foster air commerce and to study the problems connected therewith;

(2) to provide means for collaboration among the air transport enterprises engaged directly or indirectly in international air transport service;

(3) to cooperate with the International Civil Aviation Organization and other international organizations.

The Head Office of IATA is in the City of Montreal in the Province of Quebec. IATA has a membership of one hundred airlines from over sixty countries. The list of the IATA membership is set forth in Exhibit 1 hereto.

In 1949, the Civil Aeronautics Board first approved IATA's uniform passenger ticket so that "Uniform conditions of carriage will be applicable to the entire journey." 10 C.A.B. 783, 784. In 1957, the Civil Aeronautics Board approved the form of IATA passenger ticket involved in these cases. 24 C.A.B. 575. Based on such governmental approval and that of other nations,[1] the standard IATA ticket has become an accepted international document. Over 90% of all scheduled international air traffic moves under this standard ticket. The IATA ticket is being honored and used by the world's airlines on the premise that transportation furnished thereunder which is international under the terms of the Warsaw Convention will be governed by this international treaty. At no time here involved had the type size of the IATA ticket been specified as a condition of governmental approval. Thus, the construction to be accorded the Warsaw Convention in these cases is a matter of prime concern to IATA and its members.

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[1] Under bilateral air transport agreements to which the United States is a party all agreements reached through IATA's traffic conferences are submitted to the Civil Aeronautics Board for approval. See, *e.g.*, The Bermuda Agreement, TIAS 6019.

The Proceedings Below.

Shortly after takeoff from Shannon, Ireland, while en route from Rome to New York on February 26, 1960, one of Alitalia's aircraft crashed. Each of the passengers aboard was traveling pursuant to a passenger ticket conforming to the requirements of the Warsaw Convention.[2] Most of the tickets had been purchased outside the United States.

Under ordinary circumstances Alitalia's liability in these actions for wrongful death and personal injuries would be limited by Article 22 of the Convention to the sum of 125,000 francs [$8,291.87] for each passenger.[3]

The District Court, although according to one authority "realizing that [it] was breaking a chain of hundreds of precedents,"[4] held that the statements in the tickets refer-

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[2] Article 3 of the Warsaw Convention (49 Stat. 3000; T.S. 876), adhered to by the United States effective October 29, 1934, provides that the passenger ticket shall contain (a) the place and date of issue; (b) the place of departure and destination; (c) the agreed stopping places; (d) the name and address of the carrier or carriers and (e) "a statement that the transportation is subject to the rules relating to liability established by this convention."

The tickets in this case conformed to the Convention's requirements and were also in form approved by the Civil Aeronautics Board. See *Pan American World Airways, et al. Conditions of Carriage*, 24 C.A.B. 575 (1957).

[3] 49 Stat. 3019. By reason of the extraordinary efforts of Mr. Knut Hammarskjold, Director General of IATA, an agreement constituting a special contract under Article 22(1) of the Convention has since been effected between eighty international airlines under which, as approved by the Civil Aeronautics Board effective May 16, 1966, liability on flights serving the United States is increased to proven damages not to exceed $75,000, inclusive of legal fees and costs, and liability up to this limit does not depend on negligence on the part of the carrier. 31 F.R. 7302 (1966). For an account of IATA's part in effecting this agreement see Lowenfeld and Mendelsohn, *The United States and the Warsaw Convention*, 80 Harv. L. Rev. 497, 586-596.

[4] Lowenfeld and Mendelsohn, *The United States and the Warsaw Convention*, 80 Harv. L. Rev. 497, 512, n. 64.

ring to the Convention were in type so small as to be "virtually invisible" and that petitioner had therefor failed to comply with Article 3(1)(e) of the Convention.[5]

The Court of Appeals affirmed, Moore, J. dissenting, 370 F. 2d 508. Ostensibly the majority ruled that "a jury could not reasonably have found that the tickets and baggage checks gave the passengers the required notice." *Id.* at 514. In actuality the majority simply did not approve the terms of the Convention, labeling them as "arbitrary limitations on liability—which have been severely and repeatedly criticized. . . ." *Id.* at 512.

Clearly as the dissent states "The majority do not approved of the terms of the treaty and, therefore, by judicial fiat they rewrite it." *Id.* at 515.

The Court below would thus rewrite the Convention to make mandatory a larger type size of the statement specified in Article 3 of the Warsaw Convention. Yet the executive branch of the United States Government was unsuccessful in its attempt so to amend the Convention at the Hague Conference in September, 1955.[6]

Reasons for Granting the Writ.

1. The decision below involves the construction of a treaty between the United States and over ninety other nations affecting airline transportation throughout the world.

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[5] *Lisi* v. *Alitalia-Linee Aeree Italiane*, 253 F. Supp. 237, 243 (S. D. N. Y. 1966).

[6] Civil Aeronautics Board, Aeronautical Statutes and Related Material 324-66 (1963). The United States has not ratified the Hague Protocol. At the Hague Conference the United States proposed that the Protocol specify that the heading of the statement "be set out in letters of not less than five millimetres high." Volume 1, Minutes, International Conference on Private Air Law, The Hague, September 1955, ICAO Doc. 7686—LC/140, page 124. The Conference rejected this proposal.

As a treaty the Warsaw Convention is a part of the "supreme Law of the Land," U. S. Const. art. VI, §2; *Samann* v. *C. I. R.*, 313 F.2d 461, 463 (4th Cir. 1963); *Wyman* v. *Pan American Airways*, 181 Misc. 963, 43 N. Y. S. 2d 420 (Sup. Ct. N. Y. Co. 1943), *aff'd.* 267 App. Div. 947, 48 N. Y. S. 2d 459 (1st Dept. 1944), *app. den.* 267 App. Div. 983, 49 N. Y. S. 2d 271 (1st Dept. 1944), *cert. den.* 324 U. S. 882 (1945); *Garcia* v. *Pan American Airways*, 269 App. Div. 287, 55 N. Y. S. 2d 317 (2d Dept. 1945), *aff'd.* 295 N. Y. 852, 67 N. E. 2d 257 (1946), *motion den.* 295 N. Y. 981, 68 N. E. 2d 59 (1946), *cert. denied*, 329 U. S. 741 (1946).

It is the purpose of the Convention to regulate "in a uniform manner the conditions of international transportation by air in respect of the documents used for such transportation and of the liability of the carrier," 49 Stat. 3000, 3014; T. S. 876.

The uniform IATA ticket here involved was adopted under and in conformance with the Warsaw Convention.[7] It has been approved by the Government of Italy. It was approved by the Civil Aeronautics Board after two and one-half years of study and conferences with members of IATA and other interested persons following public notice, 24 C. A. B. 575, 576. Each flight coupon in Alitalia's ticket clearly sets forth in Italian and English the following statement:

> "If the passenger's journey involves an ultimate destination or stop in a country other than the country of departure the Warsaw Convention may be applicable and the Convention governs and in most cases limits the liability of carriers for death or per-

[7] The ticket is in world-wide use and is subject to approval by all countries whose carriers are members of IATA. No country prior to February 26, 1960, the date of the accident, had required a specific size of type, a proposal rejected at The Hague. See note 6, *supra*.

sonal injury and in respect of loss of or damage to baggage." See 253 F. Supp. at 242.

In approving this specific statement the Civil Aeronautics Board said:

> "The revision to the form of passenger ticket provides for changing the notice of applicability of the Convention which is required by the Convention in the form specified in the Protocol to the convention adopted at The Hague. The new form is much clearer and informative than the one now found on the ticket." 24 C. A. B. at 577.

Whether the Court of Appeals may rewrite the Warsaw Convention by judicial fiat so as to hold invalid thereunder the uniform IATA ticket held by Alitalia's passengers and thereby subject airlines to unlimited liability under the Convention, is a question of importance to the entire air transportation industry. *Herd & Co.* v. *Krawill Machinery Corp.*, 359 U. S. 297, 300 (1959). An important question of federal law which has not been, but should be, decided by this Court is clearly involved.

Because of its international implications, the final decision in this case will have far-reaching consequences. As stated by the Minister of State Board of Trade of Great Britain "This *Lisi* case is being watched by the British Government and the experts of the International Civil Aviation Organization are watching it with the greatest care. Depending on what the final decision is, we shall have to decide then what action we can take. I am grateful to Hon. Members for raising this matter which is clearly of great importance."[8]

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[8] House of Commons Official Report—Parliamentary Debates—Volume 740, No. 139, Wednesday, 8th February, 1967, 1574/5, 1591.

2. The decision of the Court of Appeals below is in direct conflict with the rules of construction applied to treaties of the United States under the holdings of this Court.

(a) This Court has stated that in ascertaining the meaning of a treaty it may look to negotiations of the parties and their practical construction of it. In *Factor* v. *Laubenheimer*, 290 U. S. 276, 294-295 (1933), this Court said:

> "In ascertaining the meaning of a treaty we may look beyond its written words to the negotiations and diplomatic correspondence of the contracting parties relating to the subject matter, and to their own practical construction of it. *Nielsen* v. *Johnson*, 279 U. S. 47, 52; *In re Ross, supra*, 467; *United States* v. *Texas*, 162 U. S. 1, 23; *Kinkead* v. *United States*, 150 U. S. 483, 486; *Terrace* v. *Thompson*, 263 U. S. 197, 223. And in resolving doubts the construction of a treaty by the political department of the government, while not conclusive upon courts called upon to construe it, is nevertheless of weight. *Nielsen* v. *Johnson, supra*, 52; *Charlton* v. *Kelley*, 229 U. S. 447, 468."

The decision below has ignored the negotiations and the parties' practical construction of the Warsaw Convention. These factors reveal, without a doubt, that the sanction of unlimited liability was not to be applied to a carrier "if the ticket does not contain the particulars" listed in Article 3(1) of the Convention. Indeed, a proposal to impose such a sanction was deleted from an earlier draft of the Convention after full debate.[9] Thus, it is only where the carrier fails to deliver a ticket to the passenger that the Convention

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[9] The drafting committee at the Warsaw Conference deleted from such sanction the words "or if the ticket does not contain the particulars indicated above". II Conférence Internationale de Droit Privé Aérien, ICAO Doc. 7838, pp. 100-101 (1930).

would impose unlimited liability. The Court below ignored this clear legislative history.

Nor did the Court below attach any significance to the fact that the delegates to the Hague Conference in 1955, called to review and amend the Warsaw Convention, expressly recognized that the Warsaw Convention did not impose the sanction in Article 3(2) where the ticket did not contain the particulars listed in Article 3(1). Thus, after extensive debate, the Hague Conference adopted a specific amendment to Article 3(2) so as to provide that "if the ticket does not include the notice required by paragraph 1(c) of this Article, the carrier shall not be entitled to avail himself of the provisions of Article 22".[10] The Hague Protocol however, with its new sanctions, is not applicable to this action.[11]

(b) The Court below also has not applied this Court's holding that treaties cannot be altered by a court upon any notion of equity or general convenience, or substantial justice and that only the parties to a treaty are competent to change it. As stated by this Court in *The Amiable Isabella*, 19 U. S. (6 Wheat.) 1, 7 (1821):

> "We are not at liberty to dispense with any of the conditions or requirements of the treaty, or to take away any qualification or integral part of any stipulation, upon any notion of equity or general convenience, or substantial justice. The terms which the parties have chosen to fix, the forms which they have prescribed, and the circumstances under which

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[10] I, International Conference on Private Air Law, ICAO Doc. 7686-LC/140, p. 134 (1955).

[11] Although the Hague Protocol has not been ratified by the United States and hence there was no requirement here that Alitalia's tickets contain any such notice, each passenger coupon of Alitalia's tickets in these cases also bears language in the form required by Article III, paragraph 1(c), of the Hague Protocol prominently positioned across the entire bottom of the passenger coupon, both in English and Italian.

> they are to have operation, rest in the exclusive discretion of the contracting parties, and whether they belong to the essence or the model parts of the treaty, equally give the rule to judicial tribunals. The same powers which have contracted, are alone competent to change or dispense with any formality."

And most recently stated by this Court in *Maximov* v. *United States*, 373 U. S. 49, 54 (1962):

> "* * * it is particularly inappropriate for a court to sanction a deviation from the clear import of a solemn treaty between this Nation and a foreign sovereign, when, as here, there is no indication that application of the words of the treaty according to their obvious meaning effects a result inconsistent with the intent or expections of its signatories."

As Judge Moore stated in his dissent, "The majority do not approve of the terms of the treaty and, therefore, by judicial fiat they rewrite it." 370 F. 2d at 515. It is clear that the majority have rewritten the Warsaw Convention based upon their "notion of equity" that the limitations of liability are "arbitrary."

Conclusion.

The retroactive rewriting of the Warsaw Convention by the Court of Appeals will affect the outcome in over one hundred cases now pending in federal and state courts throughout the United States.

The decision below directly affects the relationship of all international airlines operating to and from the United States with millions of passengers and the relationship of the United States under the Warsaw Convention with other nations which are parties to the Convention.

The decision of the Court of Appeals may adversely affect the delicate inter-governmental understanding which is necessary to maintain the standard form of airline ticket in world-wide use. The decision of the Court of Appeals has jeopardized world-wide acceptance of uniform travel documents which are based upon the plain meaning of treaties, and which comply with applicable government regulations. The decision could create a precedent under which international airlines and the governments whose flag they fly could not safely rely on United States Government approval of agreements and documents used in international air transportation. In the public interest the decision of the Court below deserves consideration by the highest court in the United States.

For these reasons and the reasons set forth in Alitalia's petition, it is respectfully urged that the petition of Alitalia for a writ of certiorari be granted.

Respectfully submitted,

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Attorney for the International
Air Transport Association

J. G. THOMKA GAZDIK,
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Certificate of Service.

I hereby certify that copies of this motion and the attached brief have been served upon

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Such service was made by posting the foregoing documents by first class mail.

Harold L. Warner, Jr.

Exhibit 1

IATA MEMBERSHIP AS AT 1st MARCH 1967

Active Members (86)

Aden Airways Ltd. (Fed. of South Arabia)
Aer Lingus Teoranta (Dublin)
Aerlinte Eireann (Dublin)
Aerolineas Argentinas (Buenos Aires)
Aerolineas Peruanas S.A. (Lima)
Aeronaves de Mexico S.A. (Mexico City)
Aerovias Nacionales de Colombia S.A. (AVIANCA) (Bogotá)
Air Afrique (Abidjan)
Air Algérie (Algiers)
Air Canada (Montreal)
Air Ceylon (Colombo)
Air Congo (Kinshasa)
Air France (Paris)
Air Guinée (Conakry)
Air-India (Bombay)
Air Mali (Bamako)
Air New Zealand (Auckland)
Air Vietnam (Saigon)
ALIA—The Royal Jordanian Airlines (Amman)
ALITALIA-Linee Aeree Italiane (Rome)
American Airlines Inc. (New York)
Austrian Airlines (Vienna)
Aviacion y Comercio S.A. (Madrid)

Braniff International Airways (Dallas)
British Eagle International Airlines (London)
British European Airways (London)
British Overseas Airways Corp. (London)
British United Airways Ltd. (London)
British West Indian Airways (Trinidad)

Canadian Pacific Air Lines (Vancouver)
Central African Airways Corporation (Salisbury, Southern Rhodesia)

Exhibit 1 (cont.)

Ceskoslovenske Aerolinie N.P. (Prague)
Civil Air Transport Co. Ltd. (Taipei)
Cyprus Airways Limited (Nicosia)

Delta Air Lines Inc. (Atlanta)
Deutsche Lufthansa (Cologne)
Direcçao de Exploraçao dos Transportes Aereos "DETA" (Lourenço Marques)
Direcçao de Exploraçao dos Transportes Aereos "DTA" (Luanda)

East African Airways Corp. (Nairobi)
Eastern Airlines Inc. (New York)
El Al Israel Airlines (Tel Aviv)
Empresa Consolidada Cubana Aviacion (Havana)
Empresa de Viaçao Aerea Rio Grandense (VARIG) (Porto Alegre)
Ethiopian Air Lines S.C. (Addis Ababa)

FINNAIR—Aero O/Y (Helsinki)
Flugfelag Islands H.F. (Reykjavik)

P.N. Garuda Indonesian Airways (Djakarta)
Ghana Airways Corporation (Accra)

IBERIA, Lineas Aéreas de España (Madrid)
Indian Airlines Corporation (New Delhi)
Iran National Airlines Corp. (Teheran)
Iraqi Airways (Baghdad)

Japan Air Lines Co. Ltd. (Tokyo)
Jugoslovenski Aerotransport (JAT) (Belgrade)

Kingdom of Libya Airlines (Benghazi)
KLM Royal Dutch Airlines (The Hague)
Kuwait Airways Corporation (Kuwait)

Lebanese International Airways (Beirut)
Linea Aerea Nacional (LANCHILE) (Santiago)

The Malta Airlines (Sliema)
Middle East Airlines Airliban (Beirut)
Mohawk Airlines Inc. (Utica, N.Y.)

Exhibit 1 (cont.)

Northwest Airlines Inc. (St. Paul)

Olympic Airways S.A. (Athens)

Pakistan International Airlines Corp. (Karachi)
Pan American World Airways Inc. (New York)
Philippine Air Lines Inc. (Manila)
Polish Airlines "LOT" (Warsaw)

Qantas Empire Airways Ltd. (Sydney)

Scandinavian Airlines System (Stockholm)
Seaboard World Airlines Inc. (New York)
Servicos Aereos Cruzeiro do Sul S.A. (Rio de Janeiro)
Société Anonyme Belge d'Exploitation de la Navigation Aérienne (SABENA) (Brussels)
South African Airways (Johannesburg)
Sudan Airways (Khartoum)
Swiss Air Transport Co. Ltd. (Zurich)

Trans-Mediterranean Airways SAL (Beirut)
Transportes Aereos Portugueses (TAP) (Lisbon)
Trans World Airlines Inc. (New York)
Tunis Air (Tunis)
Turk Hava Yollari (Istanbul)

Union de Transports Aériens (UTA) (Paris)
United Air Lines (Chicago)
United Arab Airlines (Cairo)

Venezolana Internacional de Aviacion S.A. (VIASA) (Caracas)

WAAC (Nigeria) Limited (Lagos)

Exhibit 1 (cont.)

Associate Members (14)

Ansett-ANA (Melbourne)

Chicago Helicopter Airways Inc. (Chicago)
Commercial Air Services (Pty) Ltd. (Johannesburg)
Continental Air Lines Inc. (Los Angeles)
Eastern Provincial Airways (1963) Ltd. (Gander)

Flying Tiger Line Inc. (Burbank)

Linea Aerea del Cobre Ltda. (Santiago)

National Airlines Inc. (Miami)
New York Airways Inc. (New York)
New Zealand National Airways Corp. (Wellington)

Québecair Inc. (Rimouski)

Suidwes Lugdiens (Eiendoms) Beperk (Windhoek, S.W. Africa)

Trans Australia Airlines (Melbourne)

Viacao Aerea Sao Paulo S.A. (VASP) (Sao Paulo)